D.B. CIVIL SPECIAL APPEAL NO.415/2005
(Devi Lal V/s State of Rajasthan and ors.)
10.3.2006

PRESENT
HON'BLE MR. JUSTICE RAJESH BALIA
HON'BLE MR. JUSTICE R.P.VYAS

Mr.Rajesh Joshi, for the appellant.
Mr.C.S. Kotwani, for the respondents.

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The matter comes up for orders on stay application. At the request of learned counsel for the parties, the appeal itself is heard on merits

Heard the learned counsel for the parties.

This appeal is directed against the judgment of the learned Single Judge dtd.13.9.2005 by which the writ petition was dismissed.

The petitioner – appellant was aggrieved with the allotment of land in question to the respondent No.5 measuring 6 bighas and 5 biswas of land. It was also said by the petitioner in his writ petition that he is holding mining lease in the area and the land allotted for the purpose of School was near the mining area and safety and atmosphere of the school was likely to be effected by mining operation that may be going on within 300 meters of the proposed land. To this effect mining Department has also requested the allotting authority to allot alternative land for the School as that would not be conducive for

running the school. The Collector, Barmer has also opined that the land allotted to the respondent No.5 by the State Government was not conducive and has directed the concerned authority to allot alternative land for the purpose of setting up a school by the respondent No.5. The respondent No.5 has stated that in pursuance of directions of the Collector, alternative land has already been proposed to the Collector for allotment to the respondent No.5.

Thus from the material coming on record, it is undisputed fact that land initially made subject matter of allotment to respondent No.5 is not suitable for setting up of school and therefore, there cannot be insistence on the allotment of same land which the respondent No.5 is also not insisting. In these circumstances, the appeal is allowed. The judgment under appeal is set aside. The writ is disposed of with the direction to the Collector that he may allot any alternative land which is found suitable for setting up of school and land in question shall not be allotted for the school. The allotment of land be determined expeditiously as the respondent No.5 may commence the activities of the School as early as possible.

(R.P.VYAS)J (RAJESH BALIA)J.

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